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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,693	03/04/2002	James H. Oberneyer	34044-3	8492

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Charles J. Meyer, Esq.
Woodard, Emhardt, Naughton, Moriarty and McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137

EXAMINER

GORDON, STEPHEN T

ART UNIT PAPER NUMBER

3612

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,693

Applicant(s)

OBERMEYER, JAMES H.

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,17,24,27-31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) 11,30,31 and 33-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,17,24,27-29 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 and 05 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claims 11 and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 11-12-03.
2. Claims 31 and 33-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Applicant timely traversed the restriction (election) requirement in the reply filed on 11-12-03.
3. It is requested that applicant cancel at least non-elected claims 31 and 33-35 in response to this action to facilitate the issue process if the application is ultimately allowed.
4. Claims 1, 3-10, 17, 24, and 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, "the closest connection" lacks clear antecedent basis and could be written as —a closest connection—for clarity.

Re claim 3, the claim is incomplete as it depends from a canceled claim.

Re claim 4, the claim is incomplete as it depends from a canceled claim.

Re claim 17, "said closest connection" in line 7 lacks clear antecedent basis and could be written as —a closest connection—for clarity. Additionally, the last line is somewhat confusing, and —bed—could be inserted after "trailer" of the line to correct the claim in this regard.

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Re claim 27 as newly amended, "said bed end" in the last line lacks clear antecedent basis.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 5, 6, 17, 24, 27-29, and 36, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wood.

Wood teaches a dump vehicle including a dump bed, a trailer frame 1+, a hinge arm 8, and a pivot axle 9.

Re claims 1 and 17 as newly presented, at least in the position of figure 2, the closest connection is not vertical. The claim does not specify that the recited hinge arm positioning is confined to the "travel" position.

With additional regard to claim 17, at least a portion of the bed connection moves up and back as broadly recited.

Re claims 27-29, the device is configured as broadly claimed.

Re new claim 36, in as much as the container and front panel per se are not positively recited elements of the instant claimed combination, the functional/positional relating thereto is given little patentable weight. Moreover, if the front panel were initially positioned *below* the hinge arm, the related function of the hinge arm and panel would read on the claim language as broadly recited.

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7. Claim 36, as newly presented, is alternatively rejected under 35 U.S.C. 102(b) as being anticipated by Ochsner.

Ochsner teaches a trailer construction which could be used to deliver asphalt including a dump bed with an axle (at 3 – see figure 3) and a hinge arm 7. In as much as the container and front panel per se are not positively recited elements of the instant claimed combination, the functional/positional relating thereto is given little patentable weight. Moreover, if the front panel were initially positioned *below* the hinge arm, the related function of the hinge arm and panel would read on the claim language as broadly recited.

8. Claims 1, 6, 17, 24, and 27-29, as best understood, are alternatively rejected under 35 U.S.C. 102(b) as being anticipated by Barnard.

Barnard teaches a trailer construction which could be used to deliver asphalt including a dump bed with an axle 8 and a hinge arm 9+ (see figure 1).

Re claims 1 and 17 as newly amended, at least the forward link portion of element 9 (as seen in figure 1) defines a hinge arm with a horizontal distance as broadly claimed. Moreover, the closest connection of the arm is non-vertical as recited.

With further regard to claim 17, the connection location of the hinge arm moves up and back as broadly claimed – see figure 1.

Re claims 27-29, the device is configured as broadly claimed.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7-10, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood.

Wood teaches all of the claimed features as discussed above regarding claim 1 but fails to specifically teach the trailer configurations as defined in claims 7-10. Such trailer configurations are notoriously well known in the art and are selected based on a particular application requirements involving maximizing payload and minimizing vehicle weight, allowing for quick changeability of a trailer/cargo at a destination point, etc. Specific recitations of these types of trailers then would not constitute a patentably distinct departure from the teachings of Wood and known prior art practices.

11. Claims 7-10, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard.

Barnard teaches all of the claimed features as discussed above regarding claim 1 but fails to specifically teach the trailer configurations as defined in claims 7-10. Such trailer configurations are notoriously well known in the art and are selected based on a particular application requirements involving maximizing payload and minimizing vehicle weight, allowing for quick changeability of a trailer/cargo at a destination point, etc. Specific recitations of these types of trailers then would not constitute a patentably distinct departure from the teachings of Barnard and known prior art practices.

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12. Applicant's arguments filed 4-5-04 as they relate to the claim rejections under Wood have been fully considered but they are not persuasive.

Wood teaches a trailer configuration, albeit a toy, which could be used as broadly defined. Moreover, the reference includes all of the recited features with regard to the section 102 rejection. Applicant's non-analogous art argument is improperly applied to the section 102 rejection – such arguments being properly reserved for a section 103 rejection. Regarding applicant's remarks directed to the section 103 rejection involving the various recited trailer structures, such trailer configurations are notoriously well known in the art. Selection of a "full length trailer", "a semi-length trailer" etc as defined in claims 7-10 clearly would not patentably depart from the teachings of the relied upon prior art.

13. Applicant should note, the failure to apply the prior art to claims 3 and 4 should not be construed as an indication of allowable subject matter. Because the exact scope of these claims can not be clearly ascertained due to their incomplete construction as discussed above, it is not possible to apply the prior art to the claims in deciding patentability without disregarding portions of the express wording of the claims and thus resorting to speculation and conjecture as to the particular invention defined therein.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

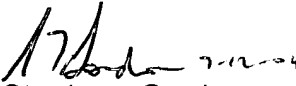
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon
Primary Examiner
Art Unit 3612

stg